

**BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA**

**In the Matter of the Application of
MARIA TERESA PANDURA,
Respondent.**

**Case No. H-2302 FR
OAH No. 2008110002**

PROPOSED DECISION

This matter came on regularly for hearing on March 23, 2009, at Los Angeles, California, before H. Stuart Waxman, Administrative Law Judge, Office of Administrative Hearings, State of California.

John Sweeney (Complainant) was represented by Lissete Garcia, Staff Counsel.

Maria Teresa Pandura (Respondent) was present and was represented by Fredrick M. Ray, Attorney at Law.

Oral and documentary evidence was received. The record was closed on the hearing date, and the matter was submitted for decision.

FACTUAL FINDINGS

The Administrative Law Judge makes the following factual findings:

1. Complainant made the Statement of Issues in his official capacity as a Deputy Real Estate Commissioner of the State of California.

2. On or about June 27, 2008, Respondent submitted an application to the Department of Real Estate (Department) for a real estate salesperson license. The application was not granted, and this matter ensued.

///

///

3. On November 30, 2007, in the Superior Court of California, County of Los Angeles, in Case No. BA327244, Respondent pled guilty and was convicted of violating Penal Code section 153 (Taking Property Without Consent), a misdemeanor inherently involving moral turpitude, and a crime substantially related to the qualifications, functions and duties of a real estate licensee. The misdemeanor conviction was the result of a plea negotiation. Respondent was originally charged with 11 felony counts of Presenting a Fraudulent Claim (Welf. & Inst. Code, § 14107, subd. (b)), and one felony count of Grand Theft (Pen. Code, § 487, subd. (a)).

4. Respondent made a restitution payment of \$17,000¹ and was then placed on summary probation for a period of 24 months. Because of the substantial restitution payment, the court suspended all fines and fees.

5. On February 5, 2009, the court set aside and vacated Respondent's guilty plea, entered a plea of not guilty, and dismissed the complaint pursuant to Penal Code section 1203.4.

6. The facts and circumstances underlying the conviction arose out of Respondent's medical billing business, a business she had operated for many years without incident. One of Respondent's physician clients hired an unlicensed physician to work in his practice. That unlicensed physician filled out Superbills for the purpose of billing Medi-Cal for patient services, and signed the licensed physician's name to them. Respondent became aware of this practice but nonetheless billed Medi-Cal for the unlicensed physician's services.

7. As a factor in mitigation, Respondent fully cooperated with the Department of Health Services' investigation and the Attorney General's Office.

8. Respondent had been in the medical billing field for 22 years. She owned her medical billing business with her husband. As a result of her wrongdoing, Respondent was prohibited from billing Medicare and Medicaid for five years. Although she was still permitted to bill private insurance carriers, she chose to sell her share of the business to another individual. The business now operates under a different name. Respondent is presently unemployed.

9. Respondent has been married to her husband for more than 25 years. They have three daughters, ages 25, 20 and 8. They enjoy a close familial relationship.

10. Respondent is active in her church. She is a member of a bible study group, and she performs community services for the needy. Those services include visits to the elderly, fundraising for Relay for Life, Christmas toy drives, food drives for the elderly, and preparing food baskets for a local mission.

¹ The \$17,000 was evenly divided between Medi-Cal for restitution, and the Department of Justice for its investigative costs.

11. Respondent is also active in her daughter's school, and she is the Chairperson for the Rosedale Union School District English Learner Advisory Committee.

12. Respondent enjoys an excellent reputation for honesty, integrity, sincerity, kindness, and a strong work ethic.

13. If she is granted licensure, Respondent intends to work for Caldwell-Banker River Lake in Bakersfield, California. The broker is aware of her conviction.

14. Respondent's crime was the only negative contact she has had with the criminal justice system. She is deeply remorseful for her wrongdoing, and she fully recognizes and acknowledges her "wrong decision" (Respondent's term). She also realizes that she should have followed proper protocols by terminating the billings to Medi-Cal when she recognized the forged signatures on the Superbills. Respondent considers herself and her family honest, hard-working people. That image made it extremely difficult for her to tell her family, her friends and her clients what she had done.

LEGAL CONCLUSIONS

Pursuant to the foregoing factual findings, the Administrative Law Judge makes the following legal conclusions:

1. Cause exists to deny Respondent's application pursuant to Business and Professions Code sections 480, subdivision (a), and 10177, subdivision (b), for conviction of a substantially related crime, as set forth in Findings 3, 4, 5 and 6.

2. Less than one year has passed since Respondent's conviction. Under other circumstances, the recency of the conviction would likely have precluded her licensure because insufficient time would have passed for Respondent to establish her rehabilitation. In this case, however, other factors militate against outright license denial.

///

///

///

///

///

3. The passage of at least two years following a criminal conviction is but one criterion in the Department's criteria for rehabilitation set forth at California Code of Regulations, title 10, section 2911. Respondent has satisfied the vast majority of the other applicable criteria. For example, she paid \$17,000 in restitution [Criterion (b)]. Her conviction has been expunged (dismissed) [Criterion (c)]. She was granted an early discharge from probation [Criterion (e)]. She enjoys a stable family life and fulfills her familial responsibilities [Criterion (h)]. She has completed the educational requirements for licensure [Criterion (i)]. She corrected her business practices by cooperating with the Department of Health Services and the Office of the Attorney General [Criterion (k)]. She is active in both church and community activities [Criterion (l)]. She has changed her attitude from that which existed at the time she was involved in criminal activity. [Criterion (n)].

4. The Department's criteria for rehabilitation is neither an exclusive, nor an exhaustive, list. Other factors may be considered. In this case, Respondent's criminal activity was an anomaly in an otherwise moral and law-abiding life, and it was the only blemish against the business she had owned and operated for many years. In addition, when the investigation was launched, Respondent immediately and fully cooperated with the authorities.

5. Respondent's self-image as an honest and hard-working individual in a family of like kind has been difficult for her to reconcile with the fact that she has suffered a criminal conviction. She has felt embarrassed, humiliated, and is deeply remorseful for her poor judgment. The great emotional effect that her conviction has had on her will very likely have an *in terrorem* effect on her in the future. Because of that effect, as well as her moral, ethical and law-abiding nature, she is unlikely to re-offend.

6. In light of all the evidence, the public safety, welfare and interest should be adequately protected by the issuance of a restricted real estate salesperson license. However, because of the temporal recency of her conviction, the probationary period must be of sufficient duration to establish Respondent's complete rehabilitation.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

Respondent's application for a real estate salesperson license is ^{denied} granted. The license is immediately ~~revoked~~; provided, however, a restricted real estate salesperson license shall be issued to Respondent pursuant to section 10156.5 of the Business and Professions Code. The restricted license issued to Respondent shall be subject to all of the provisions of section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of the Code:

1. The license shall not confer any property right in the privileges to be exercised, and the Real Estate Commissioner may, by appropriate order, suspend the right to exercise any privileges granted under this restricted license in the event of:

(a) The conviction of Respondent (including a plea of nolo contendere) of a crime which is substantially related to Respondent's fitness or capacity as a real estate licensee; or

(b) The receipt of evidence that Respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to this restricted license.

2. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license or the removal of any of the conditions, limitations or restrictions attaching to the restricted license until five years have elapsed from the date of issuance of the restricted license to Respondent.


3. With the application for license, or with the application for transfer to a new employing broker, Respondent shall submit a statement signed by the prospective employing real estate broker on a form RE 552 (Rev. 4/88) approved by the Department of Real Estate which shall certify as follows:

(a) That the employing broker has read the Decision which is the basis for the issuance of the restricted license; and

(b) That the employing broker will carefully review all transaction documents prepared by the restricted licensee and otherwise exercise close supervision over the licensee's performance of acts for which a license is required.

4. Respondent shall notify the Commissioner in writing within 72 hours of any arrest by sending a certified letter to the Commissioner at the Department of Real Estate, Post Office Box 187000, Sacramento, CA 95818-7000. The letter shall set forth the date of Respondent's arrest, the crime for which Respondent was arrested and the name and address of the arresting law enforcement agency. Respondent's failure to timely file written notice shall constitute an independent violation of the terms of the restricted license and shall be grounds for the suspension or revocation of that license.

DATED: April 14, 2009.


H. STUART WAXMAN
Administrative Law Judge
Office of Administrative Hearings

1 ANGELA L. CASH, Counsel (SBN 230882)
2 Department of Real Estate
3 P. O. Box 187007
4 Sacramento, CA 95818-7007
5 Telephone: (916) 227-0789
6 -or- (916) 227-0805 (Direct)

FILED
SEP 29 2008
DEPARTMENT OF REAL ESTATE
By K. Max

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Application of)
12 MARIA TERESA PANDURA,) No. H- 2302 FR
13 Respondent.) STATEMENT OF ISSUES
14

15 The Complainant, John Sweeney, a Deputy Real Estate Commissioner of the
16 State of California, for Statement of Issues against MARIA TERESA PANDURA (herein
17 "Respondent"), alleges as follows:

18 I

19 Complainant, John Sweeney, a Deputy Real Estate Commissioner of the State of
20 California, makes this Statement of Issues in his official capacity.

21 II

22 On or about June 27, 2008, Respondent made application to the Department of
23 Real Estate of the State of California (herein "the Department") for a real estate salesperson
24 license.

25 ///
26 ///
27 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

III

On or about November 30, 2007, in the Superior Court of the State of California, County of Los Angeles, Case Number BA327244, Respondent was convicted of the crime of Taking Property Without Consent in violation of Penal Code Section 153, a misdemeanor which bears a substantial relationship under Section 2910, Title 10, California Code of Regulations, to the qualifications, functions or duties of a real estate licensee.

IV

Respondent's criminal conviction, as described in Paragraph III, above, constitutes cause for denial of Respondent's application for a real estate license under Sections 480(a) and 10177(b) of the Code.

WHEREFORE, Complainant prays that the above-entitled matter be set for hearing and, upon proof of the charges contained herein, that the Commissioner refuse to authorize the issuance of, and deny the issuance of a real estate salesperson license to Respondent, and for such other and further relief as may be proper in the premises.


JOHN SWEENEY
Deputy Real Estate Commissioner

Dated at Fresno, California,
this 26th day of September, 2008.